IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12247 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BANK OF INDIA

Versus

RAJENDRA G PARIKH

Appearance:

1. Special Civil Application No. 12247 of 2002

NANAVATI ASSOCIATES for Petitioner No. 1

MR SV BACHANI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 22/12/2003

ORAL JUDGEMENT

Heard learned advocate Mr.Chudgar appearing on behalf of the petitioner - Bank and learned advocate Mr.Bachani for respondent workman.

#. In the present petition, the petitioner has challenged the interim order, wherein the departmental inquiry has been declared vitiated by the Industrial Tribunal in Reference [I.T.C.] No.6 / 1998 dated 11th September, 2002. The Industrial Tribunal, Surat has come to the conclusion that in respect of the preliminary point which has been raised by the workman that departmental inquiry which has been conducted against him, has been vitiated as it violated the principles of natural justice and this contention raised by the workman has been accepted by the Industrial Tribunal while passing the orders on 11th September, 2002 and come to the conclusion that the departmental inquiry which was initiated against the respondent workman is held to be vitiated as violative of principles of natural justice. Therefore, the said interim order is under challenge by the petitioner.

#. Initially, this Court has issued Rule, returnable on 5th March, 2003 on 17th January, 2003 and also granted interim relief in terms of Para-22[B] as prayed for in the prayer clause and as result thereof, stayed the further proceedings of the pending Reference before the Industrial Tribunal at Surat and the interim relief granted by this Court is still in force.

#. Learned advocate Mr.Chudgar for the petitioner bank has submitted that the Industrial Tribunal has committed gross error in coming to the conclusion and its finding is perverse and baseless. Learned advocate Mr.Chudgar has read over the impugned order before this Court from page-15 onwards. It is contended by the learned advocate Mr.Chudgar that the record which has been demanded by the respondent workman, has been subsequently produced by the workman before the Inquiry Officer on 3.10.1995 and therefore, there is no denial of reasonable opportunity to the respondent workman. He also submitted that the Industrial Tribunal has committed gross error and not considered the aspect that as to what prejudice has been caused to the workman if certain documents demanded by the workman, had not been supplied to the workman.

#. Learned advocate Mr.Bachani has submitted that the order impugned in this petition is the interim and interlocutory order, against which, petition cannot be entertained by this Court and alternatively, he submitted that the Court may given an opportunity to the petitioner to challenge the impugned interim order at the time of final order, if at all, passed against the petitioner. He also submitted that certain documents demanded by the

workman, were not supplied to the workman and this fact has been admitted by the petitioner on record which is at page.62 of the petition, wherefrom it transpires that chargesheet given by the Department to Mr.Advaryu has been demanded by the workman, even though, same has not been supplied, as clearly admitted by the petitioner. Learned advocate Mr.Bachani has again referred to the observations made by the Industrial Tribunal, Surat that after considering the record, which has been accepted by both the parties that papers in respect of FIR as well as chargesheet of Mr.Advaryu are not supplied to the workman and this fact is clear from the record. Therefore, learned advocate Mr.Bachani has again emphasised on the observations and pointed out that finding in respect of not supplying the chargesheet pertaining to Mr.Advaryu which has been served by the Department, this fact is not disputed by the petitioner as transpires from page.62. In short, his submission is, finding given by the Industrial Tribunal, Surat is not baseless and perverse.

#. I have considered submissions made by the learned advocates for the respective parties. It requires to be noted that certain contentions on merits of the matter, are raised by the learned advocate Mr.Chudgar that as to what prejudice can be said to have caused to the respondent workman on account of non supply of certain documents. I have perused the entire order passed by the Industrial Tribunal, Surat. There is no dispute that the order impugned in the petition, is the interim order passed by the Industrial Tribunal deciding the validity of the inquiry and ultimately, the tribunal has come to the conclusion that departmental inquiry is vitiated as it is contrary to the principles of natural justice. The observations [which is at page.17, internal page.6], wherein one fact is very clear that copy of the chargesheet which has been served by the Department on Mr.Advaryu not supplied to the respondent workman and this fact gets corroboration from page.62 para-IX. Therefore, the tribunal has come to the conclusion that the document demanded by the workman, has not been supplied to the respondent workman. The tribunal has also considered that as to how prejudice has been caused to the workman and this aspect is discussed at page.16 and 17 in the manner that as there was correlated allegations against both the respondents workman and Mr.Advaryu and therefore, certain papers in respect of Mr.Advaryu including the chargesheet served by the Department is necessary. It is also contended that Mr.Advaryu is also an employee of the bank and the Department has also issued chargesheet against Mr.Advaryu wherein same correlated allegations between the

respondent workman and Mr.Advaryu that is how, he required assistance from the chargesheet served by the Department to Mr.Advaryu and therefore, it is necessary for taking appropriate defence and it cannot be said that no prejudice is directly caused to the respondent workman. Therefore, according to my opinion, reasoning which has been given by the tribunal is legal and valid and as such, no error has been committed by the tribunal while passing such order on 11th September, 2002.

#. I have perused the interim order passed by the Industrial Tribunal, Surat in Reference [ITC] No.6 / 1998. The statement of claim was filed by the workman vide Exh.6. Service of the workman was terminated on 31st December, 1996. The allegation made against the respondent workman that he had helped one bank employee Mr.Advaryu for committing cheating and breach of trust with the management by Mr.Advaryu and therefore, allegations made against the respondent workman that he was helpful to said Mr.Advaryu for committing misconduct of cheating and breach of trust with the bank management and for that, chargesheet has been served to the respondent workman. The petitioner has filed detailed reply vide Exh.7 and volumes record has been produced by both the parties before the industrial tribunal, Surat. The industrial tribunal has recorded at page.16 that both the parties have produced a bulky record including papers of departmental inquiry produced by the petitioner management. Before deciding the preliminary issue, the workman was examined vide Exh.121 and witness of the petitioner Shri Rameshchandra Shah was also examined vide Exh.127 before the industrial tribunal. Both the parties have argued at length before the Industrial tribunal as noted by the tribunal and each and every minor aspects of the matter, has been highlighted from the record by both the parties and therefore, without going into the lengthy arguments and the volumes record, if the tribunal, prima facie, satisfied only considering one aspect that while conducting the departmental inquiry against the respondent workman, principle of natural justice has been violated, then it is enough for the tribunal to examine one question and not to discuss unnecessary long arguments submitted by both the parties. Both the parties have argued the matter at length relying on bulky record produced by both the parties. Therefore, in this background, the tribunal has examined the question that demand made by the workman to provide certain documents which related to Mr.Advaryu who was also chargesheeted by the Bank and the allegations against the respondent workman for helping said Mr.Advaryu for committing serious misconduct against the bank. That is how

relevancy has been considered by the Industrial Tribunal and not supplying the said documents as admitted by the petitioner at page.62, caused great prejudice to the respondent workman. This being clear finding given by the Industrial Tribunal. The tribunal also having an impression of all the oral evidence led by the both the parties and therefore, according to my opinion, the tribunal has considered each and every aspect of the matter and since the main delinquent is Mr.Advaryu and not the workman according to the discussion made by the tribunal in its interim order.

#. However, apart from the merits of the matter, this Court is fully satisfied with the reasoning given by the Industrial Tribunal, Surat. Even otherwise, the order impugned in the petition, is interim order under challenge and therefore also, the petition cannot be entertained by this Court as decided by the Apex Court in case of COOPER ENGINEERING LTD. V.P.P.MUNDHE reported in AIR 1975 SC 1900. The relevant observations made by the Apex Court in para-22 is referred to as under :

"22. We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the labour court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the labour court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue.. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the labour court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication."

Thus, the Apex Court has clearly held that it

will be legitimate for the High Court to refuse to intervene at the stage of challenge of interim order before High Court.

#. The decision referred to above, has also been considered by this Court in case of CADILA HEALTHCARE V. UNION OF INDIA reported in 1998 [2] GLH 513. The relevant observations made by this Court in para-11 are referred to as under :

"11. The matter is yet to be examined from another angle. From the scheme of the Act, 1958, it transpires that the application for registration of trade marks has to be disposed of expeditiously. Otherwise also, leaving apart the scheme of the Act aforesaid whether it is a proceeding before the Civil Court or Criminal Court or before this Court or even before any quasi judicial authority or administrative authority, the same has to be disposed of expeditiously. This object, as well as in some of the cases the mandate of the statute, can only be achieved or attained where the Courts which are having powers of superintendence or extraordinary powers under Article 226 of the Constitution of India, do no permit the parties to stall the final adjudication of the matter by questioning the decision of the authorities with regard to interlocutory matters when the mater, if worthy, can be agitated even after final orders are passed. I consider it to be fruitful here to make reference to the decision of the Apex Court in the case of The Cooper Engineering Ltd. v. P.P. Mundhe, reported in AIR 1975 SC 1900 . The Apex Court, in this case, held :

"10. In Management of Ritz Theatre (P) Ltd. v. Its workmen In Management of Ritz Theatre (P) Ltd. v. Its workmen (1), this Court was required to deal with rather ingenious argument. It was contended in that case by the workmen, in support of the tribunal's decision, that since the management at the very commencement of the trial before the Tribunal adduced evidence with regard to the merits of the case it should be held that it had given up its claim to the propriety or validity of the domestic enquiry. While repelling this argument this court made some significant observations:

"In enquiries of this kind, the first question

which the Tribunal has to consider is whether a proper enquiry has been held or not. Logically, it is only where the Tribunal is satisfied that a proper enquiry has not been held or that the enquiry having been held properly the finding recorded at such an enquiry are perverse, that the Tribunal derives jurisdiction to deal with the merits of the dispute..

If the view taken by Tribunal was held to be correct, it would lead to this anomaly that the employer would be precluded from justifying the dismissal of his employee by leading additional evidence unless he takes the risk of inviting the Tribunal to deal with the merits for itself, because as soon as he asks for permission to lead additional evidence, it would follow that he gives up his stand based on the holding of the domestic enquiry. Other wise, it may have to be held that in all such cases no evidence should be led on the merits unless the issue about the enquiry is tried as a preliminary issue. If the finding on that preliminary issue is in favour of the employer, then, no additional evidence need be cited by the employer; if the finding on the said issue is against him, permission will have to be given to the employer to cite additional evidence"."

#. Moreover, this petition is under Article 227 of the Constitution of India, filed by the petitioner. I have perused the interim order passed by the Industrial Tribunal, Surat. According to my opinion, apparently there is no error found to have committed by the Industrial Tribunal, Surat while passing the interim order impugned in the petition. Even otherwise, this Court has very limited jurisdiction under Article 227 of the Constitution of India. This Court cannot act as an appellate authority and this Court even cannot reappreciate the oral evidence led before the Tribunal and even in case where two views are possible, then also, no interference is warranted at the ends of this Court while exercising the powers under Article 227 of the Constitution of India. There is no procedural irregularity or jurisdictional error committed by the Tribunal and therefore, finding and the conclusion of the tribunal is based on the legal evidence which were on record. Learned advocate Mr.Chudgar is not able to satisfy this Court and justify the case of the petitioner before this Court and therefore, finding and the

conclusion given by the tribunal is not baseless and perverse.

Therefore, considering the observations made by the Apex Court and this Court, and in view of the discussion above, there is no substance at all in the present petition and the same deserves to be rejected and it is dismissed accordingly.

However, in the interest of justice, this Court is inclined to grant liberty in favour of the petitioner and therefore, it is observed that it would be open for the petitioner to challenge the very interim order under challenge in the present petition, being part of the final order if it goes against the present petitioner at the time of challenging the final award that may be passed by the Industrial Tribunal, Surat.

Rule is discharged. Interim relief, if any, stands vacated.

No order as to costs.

Date : 22.12.2003 [H.K.Rathod, J.]

#kailash#